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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 001305

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TAGS: [PGOV](#) [UP](#)
SUBJECT: UKRAINE: DEAL FOR SEPTEMBER 30 ELECTIONS
ANNOUNCED, BUT IS IT A DONE DEAL?

REF: A. KYIV 1297
[1](#)B. KYIV 1244

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Classified By: DCM Sheila Gwaltney, reason 1.4 (b,d)

[1](#)1. (SBU) Summary: After all night discussions, President Yushchenko, PM Yanukovych, and Rada Speaker Moroz emerged after 4 a.m. May 27 to issue a seven-point joint statement that set early elections for September 30 and aimed to resolve the ongoing political crisis. Reactions ranged from relief to doubt, amidst defiance by some. While the coalition immediately dismantled its two-month old tent camps and stage on the Maidan, coalition leaders gave a less than ringing endorsement to supporters in the Mariyinsky Park tent camp outside the Rada, with Yanukovych several times saying "if elections happen." Opposition leader Tymoshenko blessed the deal after the May 27 announcement, but jubilantly declared it a total opposition victory to journalists in the Rada May 29. A key part of the May 27 deal was to be a two-day Rada session May 29-30 to pass legislation needed to hold early elections, reaffirm bills approved by the Rada between April 2 and May 26, and pass WTO-related legislation.

However, signs from the Rada early May 29 suggest that the legislation to be passed is not yet ready and that some political forces in both the coalition and the opposition may not be fully on board with the terms of the deal struck by Yushchenko, Yanukovych, and Moroz. Parliamentary deputies spent much of May 29 in the hallways, in various organizational and strategy sessions; the Rada will formal convene again at 1600 Kyiv time.

[1](#)2. (C) Comment: Ukrainian political developments rarely seem final. The May 27 joint statement on early elections, billed as a conclusion to the two-month political and constitutional crisis, may take more than just several days to overcome the chaotic developments of the past week (reftels) and secure the steps necessary to keep the future course of political developments on track. It could yet come unglued, as have other previous oral agreements between Yanukovych and Yushchenko, although there is a strong push from many to resolve the issue once and for all prior to summer vacation season. We believe that party leaders can easily override objections raised in the Rada corridors in order to implement the deal. In addition to following the process of implementing the May 27 compromise, there are three areas of particular institutional concern, given recent vigorous struggles for control/influence by the presidential and coalition teams, that will bear close watching. They are the status of the Constitutional Court, where three justices appointed on the Presidential quota by President Kuchma and dismissed by Yushchenko refuse to leave; the Prosecutor General's Office, where two people claim to be the Prosecutor General; and the status of Interior Ministry ground troops,

who were transferred to the President by decree on May 25 and whose loyalties were called into question amidst confusion over the chain of command May 25-26. End Summary and Comment.

The Deal: Elections on Sept 30, but Much to be Done First

13. (SBU) After several days of high drama May 24-26 focused on a struggle for control of the prosecutor general's office and scuffles between security forces loyal to the president on the one hand and the coalition on the other, an all-night session between Yushchenko, Yanukovych, and Moroz led to a seven-point joint statement released after 4 a.m. on Sunday May 27. The leaders agreed: to hold pre-term elections September 30; to do so based on a Presidential decree citing Article 82, para 2 of the Constitution (Note: Which requires the Rada to have a quorum of 300 elected MPs. To deny a quorum, OU and BYuT factions would resign); to hold a plenary session of the Rada May 29-30 to enact legislation to conduct fair, democratic, and transparent elections; to readopt measures passed by the Rada after April 2 (Note: Yushchenko's first decree); to pass WTO-related legislation; to ensure the Cabinet and Central Election Commission (CEC) implement the law on the voter registry; and to appoint new members of the CEC.

14. (SBU) Yushchenko, in comments posted on the presidential website, described the compromise as a "truly wonderful result" which demonstrated that Ukraine's democracy was "mature"; he declared the crisis now "finished." While the coalition immediately dismantled its tent camps, stage, and banners on the Maidan and around the city, Yanukovych and Moroz caveated their endorsement of the statement before supporters, with Yanukovych several times referring to elections, "if they do take place." Other officials expressed doubt that the deal could stick as planned. CEC Chair Davydovych said that it would be unrealistic to expect

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a functioning new voter registry by September 30 while various past and present MPs wondered whether all BYuT and OU MPs would resign, as required for the agreed-upon legal grounds to trigger new elections.

Uncertainty in the Rada, Slow Off the Mark

15. (SBU) On May 29, Yushchenko began the process of implementing the compromise by issuing a short decree suspending his April 26 decree (that dissolved Rada and called for June 24 elections) for two days, May 29-30, to allow the Rada to do its work. However, the Rada did not immediately step up to the plate. It did not open as expected on May 29 at 10 am, as opposition MPs refused to participate in the opening session, with BYuT instead holding a faction meeting. Representatives from both Regions and BYuT indicated that the deal announced by the three leaders in Sunday was far from fleshed out. Speaker Moroz postponed the opening of the plenary session to 4 p.m.; while the Rada Secretariat distributed a list of 13 laws related to the

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election that were meant to be passed, MPs complained to us they had not seen the text of any laws. In addition, no one we talked to was sure that the Rada would vote to reaffirm the 53 laws passed since April 2, especially given BYuT and OU's opposition to a package vote since they did not approve of all of the measures.

16. (C) Regions MPs Kozhara and Makeyenko claimed to us separately that Sunday's announcement was a political statement, not a binding agreement, that the coalition still had to pass judgment, and suggested that they had doubts as to whether elections would happen in the fall at all. They objected to Yushchenko's new decree because it infringed upon their right to legislate. Moreover, they argued that a

two-day time frame for passing all the legislation named in the agreement was unrealistic. Budget Chairman Makeyenko said it would take at least a week just to amend the budget to cover election financing and to increase pensions and salaries as announced by the Cabinet. Makeyenko also stressed that Yanukovych's statements since Sunday morning had added the phrase "if there are new elections," suggesting that it had not yet been decided. Kozhara told us that a constitutional amendment had to be part of the package (note: this has been one of the sticking points; Yanukovych told visiting DAS Kramer that it was not essential, see ref B).

17. (SBU) Aides for Tymoshenko and other BYuT MPs claimed to us that Regions and Moroz were already dragging the process out again. They said that Moroz had announced that before any voting took place, there would be a full day of committee work to review proposed amendments and laws. They agreed with the Regions MPs, assessment that the Rada could not make all the necessary legislative changes in just two days. There was also some disagreement about whether the opposition was ready to resign from the Rada, as required in the deal. A BYuT aide said many of her faction's MPs did not want to relinquish their summer bonus of \$4000. Svitlana Gumenyuk, an aide to OU MP Bezsmertniy, disputed such rumors, saying that OU was in the Rada, ready to hold an afternoon session and to resign en masse as planned. BYuT leader Tymoshenko was doing her part to stir the pot of discontent, marching through the Rada hallways with a pack of journalists talking about the political compromise as a "complete victory" for the opposition.

18. (C) Comment. These comments indicate that much of the rank and file in all of the parties represented in the Rada (except for the Communists) have not been brought into the discussions that led to Sunday's compromise deal. In fact, the overriding concern for most deputies is whether or not they will be able to hold on to their Rada seats if and when there are new elections. In our view, the party leaderships have the ability to get enough deputies in line in order to implement the agreement. What is interesting is that they have not yet done so (with the possible exception of Our Ukraine).

Institutional watch: Courts, Prosecutor, Interior Troops

19. (C) The end game of the most recent crisis laid bare the weaknesses of several key institutions which remain relatively unreformed from Soviet-era precedents and behaviors: the courts, the general prosecutor's office, and the interior troops. Yanukovych's initial May 4 agreement to early elections came in the wake of Yushchenko's moves to dismiss two Kuchma-appointees on the Constitutional Court (CC) and engineer a change in the Prosecutor General's office. However, as the political crisis lurched on through

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May, and Yushchenko dismissed a third Kuchma appointee May 10, the three justices continued to report to work at the court, buoyed by mid-May local district court rulings in Donetsk and Luhansk, in Regions' home base but seemingly far from any jurisdiction to rule on a presidential decree involving constitutional court justices. One of them, Pshenychniy, assumed the role of Acting Court Chair May 17 after previous Chair Dombrovskiy stepped down from the position; one justice (Lylak) tendered his resignation May 21 due to his refusal to serve under Pshenychniy, and the Rada voted to dismiss another (Stetsyuk, an OU nominee) May 23 for making a public statement suggesting he would not take part in proceedings due to pressure on the court. The Court's press service indicated May 29 that the court continues to lack a quorum of 12 justices, with seven (of 18) on leave or listed as sick. While the May 27 deal, if implemented, takes the pressure off the CC to resolve the political crisis, its own institutional crisis and the perceived legitimacy of its justices, as well as any potential rulings, will remain a

matter of debate.

¶10. (SBU) Over the May 27-29 holiday weekend, both Oleksandr Piskun -- who returned as Prosecutor General in early May but whom Yushchenko tried to dismiss May 24, sparking the PGO scuffle -- and Viktor Shemchuk -- appointed by Yushchenko as Acting PGO May 24 -- claimed to be Prosecutor General. Piskun held a meeting with deputy prosecutors (nearly all with Donetsk roots and affiliated with Regions) and provincial prosecutors, at least one of whom spoke to the press afterwards and said he recognized Piskun's authority. Shemchuk held a session at the Presidential Secretariat; attendance was not released. The matter will likely be settled by the courts, which have been issuing contradictory rulings over the PGO office, or could be the subject of a future political compromise.

¶11. (C) Of potentially more concern is the confusion over chain of command for Interior Troops, a military formation led by a Presidential appointee (currently General Kikhtenko) normally reporting to the Interior Minister (MOI). After Yushchenko issued a May 25 decree subordinating the Interior Troops to him rather than Minister Tsushko, regional branches reacted in different ways. Interior troops based in Dnipropetrovsk and Zhytomyr started moving towards Kyiv, apparently on Kikhtenko's instruction, before being stopped by road blockades set up by the road police (DAI), which are under MOI authority, and Regions MPs. Those in Regions-leaning Kharkhiv and Crimea, however, announced they would continue to respect Tsushko's authority. As far as we can determine, none of these forces ever actually entered Kyiv. It was Tsushko's intervention with Berkut riot police at the GPO May 24 which led to the first known scuffle between armed security forces in Ukraine's 16-year history, a sobering precedent which helped set the stage for the all-night negotiations leading to the May 27 deal. A Deputy Interior Ministry asserted to the press on May 29 that these forces were under the control of the Interior Minister, but thus far, the President has not rescinded his May 25 decree.

¶12. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
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